

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:14-CV-523-FL

GORDON OUTLAW,

Plaintiff,

v.

CAROLYN W. COLVIN,
Acting Commissioner of Social Security,

Defendant.

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ORDER

This matter comes before the court on defendant's motion to dismiss (DE 13) the present action as duplicative of a prior action by the same plaintiff, 5:11-CV-647-FL, which this court remanded to the Commissioner for further proceedings pursuant to sentence six of 42 U.S.C. § 405(g). Plaintiff responds that he seeks to preserve appeal rights over the Commissioner's decision upon remand, and plaintiff does not oppose defendant's answer and transcript being filed in the prior action, which plaintiff seeks also to consolidate with this one.

In the court's remand order in case No. 5:11-CV-647-FL, the court stated that "[f]ollowing remand, the Commissioner must return to this Court to file any additional or modified findings and any transcript of additional record upon which the modification or affirmance of the prior decision is based, pursuant to sentence six of 42 U.S.C. § 405(g)." (Order, March 28, 2013). Plaintiff's recourse upon any additional or modified findings by the Commissioner, thus, is to file a motion for judgment on the pleadings, or such further motion as warranted, in case No. 5:11-CV-647-FL, after

the Commissioner has filed any additional or modified findings and any transcript of additional record upon which the modification or affirmance of the prior decision is based. See Melkonyan v. Sullivan, 501 U.S. 89, 98 (1991) (“following a sentence six remand, the Secretary must return to the district court to ‘file with the court any such additional or modified findings of fact and decision, and a transcript of the additional record and testimony upon which his action in modifying or affirming was based.’”) (quoting 42 U.S.C. § 405(g)); Sullivan v. Finkelstein, 496 U.S. 617, 626-27 (1990) (acknowledging the judicial review performed by the district court after the completion of the sentence six remand proceedings). The present action, which seeks to accomplish the same judicial review, is unnecessary and duplicative. Therefore, the present action is **DISMISSED WITHOUT PREJUDICE**, to enable continuation of proceedings in case No. 5:11-CV-647-FL.

SO ORDERED this the 23rd day of December, 2014.

A handwritten signature in black ink, reading "Louise W. Flanagan". The signature is written in a cursive, flowing style. The first name "Louise" is written with a large, ornate capital "L". The middle initial "W." is written in a smaller, simpler script. The last name "Flanagan" is written with a capital "F" and a trailing flourish.

LOUISE W. FLANAGAN
United States District Judge